

**REMARKS**

This amendment responds to the office action dated November 14, 2008.

The Examiner rejected claims 1-3, 12, and 16 under 35 U.S.C. § 103(a) as being obvious over the combination of Finseth et al., U.S. Patent No. 6,754,906 (hereinafter Finseth) in view of Thompson et al., U.S. Patent Pub. No. 2003/0018973 (hereinafter Thompson). The Examiner rejected the remaining claims, each of which depends from independent claims 1, under 35 U.S.C. § 103(a) as being obvious in view of respective combinations, each involving Thompson and Finseth as the primary combination, and each rejection being premised on the assumption that Thompson and Finseth together make obvious all the limitations of independent claim 1.

The Examiner's rejection is based on an incorrect reading of independent claim 1. Claim 1 initially recites the limitations of: "receiving a first instance of a signal associated with the depression of a button on a remote . . . and in response to the receipt of said first instance of said signal, presenting first informational material to said user in a second display mode of said presentation device" and "receiving a second instance of said signal while said first informational material is displayed to said user, and in response to the receipt of said second instance of said signal, presenting second informational material to said user while said display device is tuned to said user-selected channel." The Examiner indicates that Finseth discloses both the first and second "informational material" in the form of a programming guide having a displayed list of programming categories, such as "sports." The Examiner is not clear as to whether the first and second informational material are both being read upon the EPG, or whether the first informational material would be one category, while the second informational material would be another. In either circumstance, claim 1 distinguishes over the cited combination.

Independent claim 1 also recites the limitation of "where said first and second informational material, respectively, are sequentially adjacent ones in a *list* of preferred informational material for said user and maintained on said video presentation device, wherein a relative ranking in said list *between said first and said second informational material* is automatically determined based upon the duration that said user views respective instances of *said first and second informational material*, calculated over a temporal time period." (emphasis

added). The Examiner first alleges that Finseth's programming guide categories are "sequentially adjacent ones in a list of preferred informational material for said user, because the categories are next to each other in the programming guide. Even assuming this were a fair reading of claim 1, as amended, the combination would not teach maintaining a "relative ranking" in the list because their on-screen positions would not change.

More importantly, the Examiner erroneously asserts that Thompson teaches modification of Finseth to automatically determine the relative ranking of the first and second informational material based upon the respective lengths of time that a viewer views them. Thompson, however, discloses calculating the time that a viewer tunes to *content channels* during a time slot, and modifying the relative ranking of those content channels in a list so that, with a depression of a button, a viewer can switch to the next channel he or she is calculated as most likely to watch during that time interval. Claim 1, however, would require the Examiner to find a disclosure that would teach modification of Finseth to keep track of how much time a viewer is watching the "Sports" category of the EPG in relation to, say, the "Action" category of the EPG. Thompson certainly does not teach that. The Examiner's misreading is exacerbated by the fact that claim 1 specifies that the first and second informational material have to be unrelated to the channels to which the viewer is tuned. Thompson's list is of the channels a viewer tunes to, and modification of that list is based on the time that a user spends watching those channels. Thus, no feasible reading of Finseth and Thompson would teach the limitations of claim 1.

Furthermore, the applicant has additionally limited claim 1 to provide that the calculations by which the relative ranking, of the informational material in the claimed list, is adjusted be based on a "duration that said user views respective instances of said first and second informational material, calculated over a temporal time period, where said duration excludes respective viewing intervals less than a minimum duration and greater than a maximum duration." This limitation is certainly not disclosed by the cited prior art.

Therefore, claim 1 patentably distinguishes over the cited combination of Finseth and Thompson. Moreover, because the remaining claims depend from claim 1, and the respective rejections of each of these dependent claims is premised on the assumption that claim 1 is

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obvious in view of the combination of Finseth and Thompson, all pending claims are patentably distinguished over the cited prior art.

In view of the foregoing amendments and remarks, the applicant respectfully requests reconsideration and allowance of claims 1-3 and 5-16.

Respectfully submitted,



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